

Adopted by
Voice Vote(amended by
unanimous
consent)

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2731
OFFERED BY MR. NORWOOD

Strike all after the enacting clause and insert:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the "Occupational Safety
3 and Health Small Business Day in Court Act of 2004".

4 SEC. 2. AWARD OF ATTORNEY'S FEES AND COSTS.

5 The Occupational Safety and Health Act of 1970 (29
6 U.S.C. 651 and following) is amended by redesignating
7 section 32 through 34 as 33 through 35 and inserting the
8 following new section after section 31:

9 "SEC. 32 AWARD OF ATTORNEYS' FEES AND COSTS.

10 "(a) ADMINISTRATIVE PROCEEDINGS.—An employer
11 who—

12 "(1) is the prevailing party in any adversary
13 adjudication instituted under this Act, and

14 "(2) had not more than 100 employees and a
15 net worth of not more than \$7,000,000 at the time
16 of the adversary adjudication was initiated,
17 shall be awarded fees and other expenses as a prevailing
18 party under section 504 of title 5, United States Code,
19 in accordance with the provisions of that section, but with-



1 out regard to whether the position of the Secretary was
2 substantially justified or special circumstances make an
3 award unjust. For purposes of this section the term 'ad-
4 versary adjudication' has the meaning given that term in
5 section 504(b)(1)(C) of title 5, United States Code.

6 “(b) PROCEEDINGS.—An employer who—

7 “(1) is the prevailing party in any proceeding
8 for judicial review of any action instituted under this
9 Act, and

10 “(2) had not more than 100 employees and a
11 net worth of not more than \$7,000,000 at the time
12 the action addressed under subsection (1) was filed,
13 shall be awarded fees and other expenses as a prevailing
14 party under section 2412(d) of title 28, United States
15 Code, in accordance with the provisions of that section,
16 but without regard to whether the position of the United
17 States was substantially justified or special circumstances
18 make an award unjust. Any appeal of a determination of
19 fees pursuant to subsection (a) of this subsection shall be
20 determined without regard to whether the position of the
21 United States was substantially justified or special cir-
22 cumstances make an award unjust.

23 “(c) APPLICABILITY.—



1 “(1) COMMISSION PROCEEDINGS.—Subsection
2 (a) of this section applies to proceedings commenced
3 on or after the date of enactment of this ~~Act~~. Section

4 “(2) COURT PROCEEDINGS.—Subsection (b) of
5 this section applies to proceedings for judicial review
6 commenced on or after the date of enactment of this

7 ~~Act~~.”. Section

Strike Act
insert
Section

→ (3)

Strike Act → (7)
insert section

